Session I

Keeping Up with the Changing Corruption Landscape

- PowerPoint

- 9-47.000 – Foreign Corrupt Practices Act Of 1977, The United States Department of Justice
  Available at: https://www.justice.gov/usam/usam-9-47000-foreign-corrupt-practices-act-1977

- *Three Subsidiaries of Weatherford International Limited Agree to Plead Guilty to FCPA and Export Control Violations,* Justice News, The United States Department of Justice
  Available at: https://www.justice.gov/opa/pr/three-subsidiaries-weatherford-international-limited-agree-plead-guilty-fcpa-and-export

- *BAE Systems PLC Pleads Guilty and Ordered to Pay $400 Million Criminal Fine,* Justice News, The United States Department of Justice
  Available at: https://www.justice.gov/opa/pr/bae-systems-plc-pleads-guilty-and-ordered-pay-400-million-criminal-fine

- *Innospec Inc. Pleads Guilty to FCPA Charges and Defrauding the United Nations; Admits to Violating the U.S. Embargo Against Cuba,* Justice News, The United States Department of Justice
  Available at: https://www.justice.gov/opa/pr/innospec-inc-pleads-guilty-fcpa-charges-and-defrauding-united-nations-admits-violating-us

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- *HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit $1.256 Billion in Deferred Prosecution Agreement*, Justice News, The United States Department of Justice
  Available at: https://www.justice.gov/opa/pr/hsbc-holdings-plc-and-hsbc-bank-usa-na-admit-anti-money-laundering-and-sanctions-violations

- *Turkish Banker Convicted of Conspiring to Evade U.S. Sanctions Against Iran and Other Offenses,* Justice News, The United States Department of Justice
  Available at: https://www.justice.gov/opa/pr/turkish-banker-covicted-conspiring-evade-us-sanctions-against-iran-and-other-offenses

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Keeping Up With the Changing Corruption Landscape

Kevin Ueland, 3M Legal Affairs
Larry Ward, Dorsey & Whitney LLP
Beth Forsythe, Dorsey & Whitney LLP

The Corporate Corruption Conundrum: Global Marketplace

- The global marketplace is not a level playing field:
  - Countries with pervasive corruption are difficult for outside companies to navigate.
  - Companies win government contracts and other business over others by paying bribes.
  - Local country requirements regarding transparency into corporate ownership and monetary reporting vary widely.
  - Sanctions regimes make some markets unavailable to companies from certain countries.
- Recent volatility in global market conditions and geopolitics around issues like tariffs increases multinational companies' uncertainty about the future.
- These factors contribute to a perception that the global marketplace is unfair and/or unpredictable, increasing the risk of corrupt acts by market participants.
- This corruption risk is countered by increased implementation and enforcement of anti-bribery and anti-corruption laws that reward compliance, as well as of anti-money laundering and other laws aimed at increasing transparency within and between markets.

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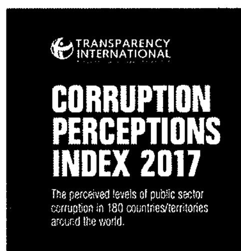
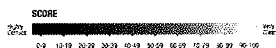
Transparency International Heat Map 2017





#cpi2017
www.transparency.org/cpi

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U.S. Foreign Corrupt Practices Act: 15 U.S.C. § 78dd-1 et seq.

Anti-bribery provisions make it unlawful for a U.S. person or agent thereof:

- **to make an offer, promise, or payment**
- **of money or anything of value**
- **to a foreign government official acting in his or her official capacity**
- **with corrupt intent**
- **to obtain or retain business**

Accounting provisions require issuers to make and keep accurate books and records and to devise and maintain an adequate system of internal accounting controls

- **Do not apply to private companies or non-profits**

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Largest Corporate Settlements (amount paid to U.S. gov't)

1. Telia Company AB (Sweden): $965 million in 2017.
2. Siemens (Germany): $800 million in 2008.
3. VimpelCom (Holland): $795 million in 2017.
4. Alstom S.A. (France): $ 772 million in 2014.
5. KBR / Halliburton (U.S.): $579 million in 2009.
6. Teva Pharmaceutical (Israel): $519 million in 2016.
7. Keppel Offshore & Marine Ltd. (Singapore): $422 million in 2017.
8. Och-Ziff (U.S.): $412 million in 2016.
9. BAE (UK): $400 million in 2010.
10. Total SA (France) $398 million in 2013.

Source: FCPA Blog

Recent Developments That May Affect FCPA Enforcement, Investigations & Compliance

- DOJ's FCPA Pilot Program (April 2016): Superseded in November 2017 by new FCPA enforcement policy (USAM 9-47.120)
  - "When a company has voluntarily self-disclosed misconduct in an FCPA matter, fully cooperated, and timely and appropriately remediated, all in accordance with the standards [in this section], there will be a presumption that the company will receive a declination absent aggravating circumstances. . . ."
  - "Aggravating circumstances" include executive involvement, significant profit from the misconduct, pervasiveness of misconduct, and recidivism
  - Further illustrates benefits of compliance, to identify issues before they become systemic or result in significant profit
- *Digital Realty Trust, Inc. v. Somers* (Feb. 2018): Supreme Court held that the anti-retaliation provision of Dodd-Frank does not extend to any individual who has not reported the possible securities laws violation to the SEC
  - Increased risk that employees may not limit report to internal channels
- *Kokesh v. SEC* (June 2017): Supreme Court held that disgorgement is a penalty whose intent is to deter, not compensate, and therefore subject to a 5-year statute of limitations

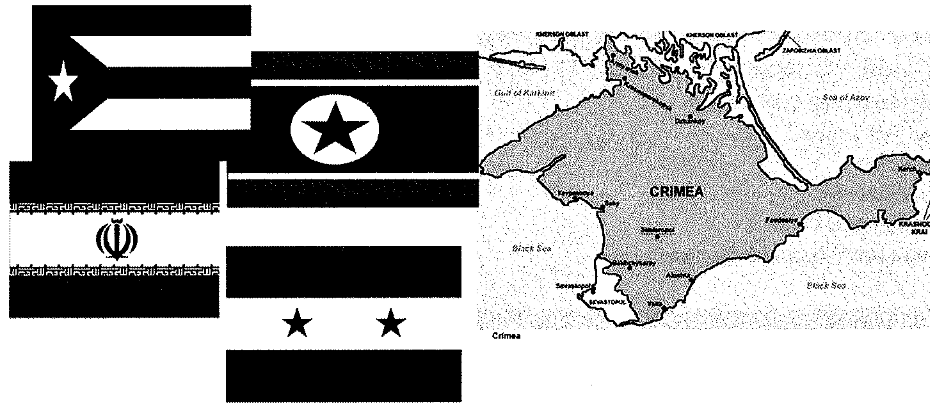
U.S. Agencies Involved in Administering Sanctions Laws

OFAC Violation Penalties

- Potential penalties can be quite significant
  - Civil penalty can be up to greater of US$295,141 or twice transaction value (strict liability regime)
  - Criminal fine can be up to US$1 million;* up to 20 years in prison; or both
- OFAC generally uses civil penalties when handling internally
- Criminal referrals require U.S. Department of Justice prosecution
- Reputational damage and breach of financial arrangements

* Alternative Fines Act actually can make fines much higher

Comprehensive Sanctions Programs



* Cuba, Iran, North Korea, and Syria

Targeted/List-Based Sanctions Programs

- Balkans
- Belarus
- Burundi
- Central African Republic
- Congo
- Côte d'Ivoire*
- Iraq
- Lebanon
- Liberia*
- Libya
- Myanmar*
- Russia
- Somalia
- South Sudan/Sudan
- Ukraine
- Venezuela
- Yemen
- Zimbabwe

* Programs against Côte d'Ivoire, Liberia and Myanmar became inactive within last two years but certain individuals/entities still targeted within those countries

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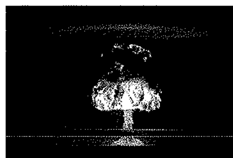
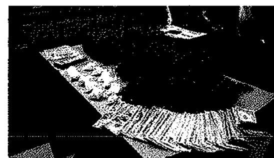
Targeted/List-Based Sanctions Programs

- Other list-based programs target individuals and entities for engaging in activities contrary to U.S. interests
  - Counter Narcotics Trafficking
  - Counter Terrorism
  - Cyber-related
  - Non-Proliferation
  - Rough Diamond Trade
  - Transnational Criminal Organizations

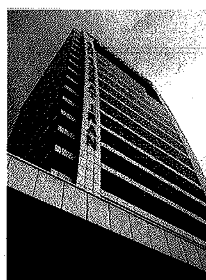




Lists of Sanctioned Persons and Entities

- OFAC maintains several key lists of sanctioned persons and entities
  - Specially Designated Nationals and Blocked Persons List (SDN List)
  - Sectoral Sanctions Identifications List (SSI List)
  - Foreign Sanctions Evaders List
  - Part 561 List

- BIS and DDTC also maintain lists of sanctioned persons and entities



General Impact of U.S. Sanctions

- No direct exports of goods or services by U.S. person to any embargoed country or SDN
- No reexports to embargoed country or SDN with knowledge of final end-user location
- No imports of embargoed goods or services
- No dealings in embargoed goods or services
- No evasion, avoidance, "facilitation" of barred transactions
- No dealings in "blocked property" or with "blocked person"

Jurisdictional Scope of Sanctions and "Extra-Territoriality"

- Generally speaking, sanctions only apply to "U.S. persons"
- U.S. Congress has "legislated" extra-territorial effect and mandates that its economic sanctions against Cuba and Iran also apply with equal force to foreign subsidiaries owned or controlled by U.S. person
  - Can create substantial legal friction when foreign subsidiary is located in jurisdiction with "blocking statute"
- Other U.S. legislation has created possible adverse consequences for foreign companies doing business with Iran and Syria

Prohibition on Facilitation

- Facilitation bars U.S. persons from assisting or supporting trading activity with sanctioned countries by foreign entities, including owned/controlled subsidiaries of U.S. companies
  - Foreign subsidiaries must act independent of U.S. persons and not involve U.S. offices or personnel to assist with transaction that would be prohibited if done directly by U.S. person
  - U.S. persons generally may not change policies or procedures to enable foreign entity to enter into such transactions

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OFAC Guidance on Entities Owned by Blocked Persons

Issued by OFAC on August 13, 2014

Key phrase: *"Persons whose property and interests in property are blocked pursuant to an Executive order or regulations administered by OFAC (blocked persons) are considered to have an interest in all property and interests in property of an entity in which such blocked persons own, whether individually or in the aggregate, directly or indirectly, a 50 percent or greater interest."*

Warning about dealing with entities that may appear to have significant ownership by blocked person but less than 50%

U.S. person may not buy goods or services from such entity that is majority owned by blocked person

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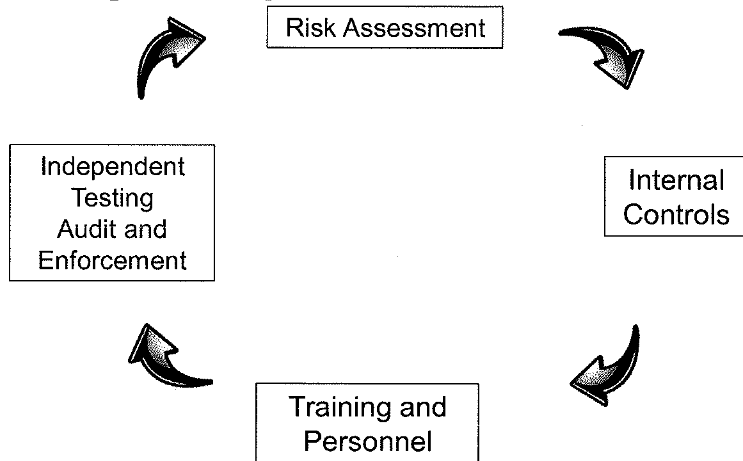
Money Laundering

- 18 U.S.C. 1956: a person launders money when he or she knowingly conducts a financial transaction that involves the proceeds of unlawful activity, for the purpose of concealing the location, source, ownership and control of those proceeds
  - The specified unlawful activity may be a violation of the FCPA or violation of foreign public corruption law, or sanctions violation
  - Marcelo Reyes Lopez – former Petroecuador executive pled guilty in April 2018 to one count of money laundering related to proceeds from bribery of foreign official
- Bank Secrecy Act and related anti-money laundering laws require banks to implement controls to prevent and detect money laundering and to report relevant activity to law enforcement when detected. This includes:
  - Know your customer and due diligence requirements (new Beneficial Ownership Rule)
  - Suspicious activity monitoring and reporting
  - Screening against OFAC and other government lists
- International enforcement of similar banking laws is increasing, but many havens still exist. Compliance measures should address this risk, such as third party due diligence to determine whether a third party banks in the same country where it operates and is headquartered

When OFAC Sanctions, FCPA, and AML Violations Intersect

- Weatherford International
- BAE Systems
- Innospec
- HSBC
- Mehmet Hakan Atilla

Anti-Corruption, Sanctions, and Money Laundering Compliance



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Questions?

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U.S. Attorneys » Resources » U.S. Attorneys' Manual » Title 9: Criminal

9-47.000 - Foreign Corrupt Practices Act Of 1977

9-47.100	Introduction
9-47.110	Policy Concerning Criminal Investigations and Prosecutions of the Foreign Corrupt Practices Act
9-47.120	FCPA Corporate Enforcement Policy
9-47.130	Civil Injunctive Actions

9-47.100 - Introduction

This chapter contains the Department's policy regarding investigations and prosecutions of violations of the Foreign Corrupt Practices Act (FCPA). The FCPA prohibits both United States and foreign corporations and nationals from offering or paying, or authorizing the offer or payment, of anything of value to a foreign government official, foreign political party, party official, or candidate for foreign public office, or to an official of a public international organization in order to obtain or retain business. In addition, the FCPA requires publicly-held United States companies to make and keep books and records which, in reasonable detail, accurately reflect the disposition of company assets and to devise and maintain a system of internal accounting controls sufficient to reasonably assure that transactions are authorized, recorded accurately, and periodically reviewed.

Further guidance on the FCPA is available in *A Resource Guide to the U.S. Foreign Corrupt Practices Act* (2012), published by the Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, *available at* https://www.justice.gov/sites/default/files/criminal-fraud/legacy/2015/01/16/guide.pdf.

[updated October 2016]

9-47.110 - Policy Concerning Criminal Investigations and Prosecutions of the Foreign Corrupt Practices Act

No investigation or prosecution of cases involving alleged violations of the antibribery provisions of the Foreign Corrupt Practices Act (FCPA) of 1977 (15 U.S.C. §§ 78dd-1, 78dd-2, and 78dd-3)

or of related violations of the FCPA's record keeping provisions (15 U.S.C. § 78m(b)) shall be instituted without the express authorization of the Criminal Division.

Any information relating to a possible violation of the FCPA should be brought immediately to the attention of the Fraud Section of the Criminal Division. Even when such information is developed during the course of an apparently unrelated investigation, the Fraud Section should be notified immediately. Close coordination of such investigations and prosecutions with the United States Securities and Exchange Commission (SEC) and other interested agencies is essential. Additionally, the Department has established a FCPA Opinion Procedure concerning proposed business conduct. *See* A Resource Guide to the U.S. Foreign Corrupt Practices Act at 86.

Unless otherwise agreed upon by the AAG, Criminal Division, investigations and prosecutions of alleged violations of the antibribery provisions of the FCPA will be conducted by Trial Attorneys of the Fraud Section. Prosecutions of alleged violations of the record keeping provisions, when such violations are related to an antibribery violation, will also be conducted by Fraud Section Trial Attorneys, unless otherwise directed by the AAG, Criminal Division.

The investigation and prosecution of particular allegations of violations of the FCPA will raise complex enforcement problems abroad as well as difficult issues of jurisdiction and statutory construction. For example, part of the investigation may involve interviewing witnesses in foreign countries concerning their activities with high-level foreign government officials. In addition, relevant accounts maintained in United States banks and subject to subpoena may be directly or beneficially owned by senior foreign government officials. For these reasons, the need for centralized supervision of investigations and prosecutions under the FCPA is compelling.

[updated August 2013]

9-47.120 - FCPA Corporate Enforcement Policy

1. Credit for Voluntary Self-Disclosure, Full Cooperation, and Timely and Appropriate Remediation in FCPA Matters

Due to the unique issues presented in FCPA matters, including their inherently international character and other factors, the FCPA Corporate Enforcement Policy is aimed at providing additional benefits to companies based on their corporate behavior once they learn of misconduct. When a company has voluntarily self-disclosed misconduct in an FCPA matter, fully cooperated, and timely and appropriately remediated, all in accordance with the standards set forth below, there will be a presumption that the company will receive a declination absent aggravating circumstances involving the seriousness of the offense or the nature of the offender. Aggravating circumstances that may warrant a criminal resolution include, but are not limited to, involvement by executive management of the company in the misconduct; a significant profit to the company from the misconduct; pervasiveness of the misconduct within the company; and criminal recidivism.

If a criminal resolution is warranted for a company that has voluntarily self-disclosed, fully cooperated, and timely and appropriately remediated, the Fraud Section:

- will accord, or recommend to a sentencing court, a 50% reduction off of the low end of the U.S. Sentencing Guidelines (U.S.S.G.) fine range, except in the case of a criminal recidivist; and
- generally will not require appointment of a monitor if a company has, at the time of resolution, implemented an effective compliance program.

To qualify for the FCPA Corporate Enforcement Policy, the company is required to pay all disgorgement, forfeiture, and/or restitution resulting from the misconduct at issue.

2. Limited Credit for Full Cooperation and Timely and Appropriate Remediation in FCPA Matters Without Voluntary Self-Disclosure

If a company did not voluntarily disclose its misconduct to the Department of Justice (the Department) in accordance with the standards set forth above, but later fully cooperated and timely and appropriately remediated in accordance with the standards set forth above, the company will receive, or the Department will recommend to a sentencing court, up to a 25% reduction off of the low end of the U.S.S.G. fine range.

3. Definitions

a. *Voluntary Self-Disclosure in FCPA Matters*

In evaluating self-disclosure, the Department will make a careful assessment of the circumstances of the disclosure. The Department will require the following items for a company to receive credit for voluntary self-disclosure of wrongdoing:

- The voluntary disclosure qualifies under U.S.S.G. § 8C2.5(g)(1) as occurring "prior to an imminent threat of disclosure or government investigation";
- The company discloses the conduct to the Department "within a reasonably prompt time after becoming aware of the offense," with the burden being on the company to demonstrate timeliness; and
- The company discloses all relevant facts known to it, including all relevant facts about all individuals involved in the violation of law.

b. *Full Cooperation in FCPA Matters*

In addition to the provisions contained in the Principles of Federal Prosecution of Business Organizations, see USAM 9-28.000, the following items will be required for a company to receive credit for full cooperation for purposes of USAM 9-47.120(1) (beyond the credit available under the U.S.S.G.):

- As set forth in USAM 9-28.720, disclosure on a timely basis of all facts relevant to the wrongdoing at issue, including: all relevant facts gathered during a company's independent investigation; attribution of facts to specific sources where such attribution does not violate

the attorney-client privilege, rather than a general narrative of the facts; timely updates on a company's internal investigation, including but not limited to rolling disclosures of information; all facts related to involvement in the criminal activity by the company's officers, employees, or agents; and all facts known or that become known to the company regarding potential criminal conduct by all third-party companies (including their officers, employees, or agents);

- Proactive cooperation, rather than reactive; that is, the company must timely disclose facts that are relevant to the investigation, even when not specifically asked to do so, and, where the company is or should be aware of opportunities for the Department to obtain relevant evidence not in the company's possession and not otherwise known to the Department, it must identify those opportunities to the Department;
- Timely preservation, collection, and disclosure of relevant documents and information relating to their provenance, including (a) disclosure of overseas documents, the locations in which such documents were found, and who found the documents, (b) facilitation of third-party production of documents, and (c) where requested and appropriate, provision of translations of relevant documents in foreign languages;
  - Note: Where a company claims that disclosure of overseas documents is prohibited due to data privacy, blocking statutes, or other reasons related to foreign law, the company bears the burden of establishing the prohibition. Moreover, a company should work diligently to identify all available legal bases to provide such documents;
- Where requested, de-confliction of witness interviews and other investigative steps that a company intends to take as part of its internal investigation with steps that the Department intends to take as part of its investigation; and
- Where requested, making available for interviews by the Department those company officers and employees who possess relevant information; this includes, where appropriate and possible, officers, employees, and agents located overseas as well as former officers and employees (subject to the individuals' Fifth Amendment rights), and, where possible, the facilitation of third-party production of witnesses.

c. *Timely and Appropriate Remediation in FCPA Matters*

The following items will be required for a company to receive full credit for timely and appropriate remediation for purposes of USAM 9-47.120(1) (beyond the credit available under the U.S.S.G.):

- Demonstration of thorough analysis of causes of underlying conduct (i.e., a root cause analysis) and, where appropriate, remediation to address the root causes;
- Implementation of an effective compliance and ethics program, the criteria for which will be periodically updated and which may vary based on the size and resources of the organization, but may include:
  - The company's culture of compliance, including awareness among employees that any criminal conduct, including the conduct underlying the investigation, will not be tolerated;
  - The resources the company has dedicated to compliance;
  - The quality and experience of the personnel involved in compliance, such that they can understand and identify the transactions and activities that pose a potential risk;

- The authority and independence of the compliance function and the availability of compliance expertise to the board;
- The effectiveness of the company's risk assessment and the manner in which the company's compliance program has been tailored based on that risk assessment;
- The compensation and promotion of the personnel involved in compliance, in view of their role, responsibilities, performance, and other appropriate factors;
- The auditing of the compliance program to assure its effectiveness; and
- The reporting structure of any compliance personnel employed or contracted by the company.

- Appropriate discipline of employees, including those identified by the company as responsible for the misconduct, either through direct participation or failure in oversight, as well as those with supervisory authority over the area in which the criminal conduct occurred;
- Appropriate retention of business records, and prohibiting the improper destruction or deletion of business records, including prohibiting employees from using software that generates but does not appropriately retain business records or communications; and
- Any additional steps that demonstrate recognition of the seriousness of the company's misconduct, acceptance of responsibility for it, and the implementation of measures to reduce the risk of repetition of such misconduct, including measures to identify future risks.

4. Comment

Cooperation Credit: Cooperation comes in many forms. Once the threshold requirements set out at USAM 9-28.700 have been met, the Department will assess the scope, quantity, quality, and timing of cooperation based on the circumstances of each case when assessing how to evaluate a company's cooperation under the FCPA Corporate Enforcement Policy.

"De-confliction" is one factor that the Department may consider in determining the credit that a company will receive for cooperation. The Department's requests to defer investigative steps, such as the interview of company employees or third parties, will be made for a limited period of time and will be narrowly tailored to a legitimate investigative purpose (e.g., to prevent the impeding of a specified aspect of the Department's investigation). Once the justification dissipates, the Department will notify the company that the Department is lifting its request.

Where a company asserts that its financial condition impairs its ability to cooperate more fully, the company will bear the burden to provide factual support for such an assertion. The Department will closely evaluate the validity of any such claim and will take the impediment into consideration in assessing whether the company has fully cooperated.

As set forth in USAM 9-28.720, eligibility for full cooperation credit is not predicated upon waiver of the attorney-client privilege or work product protection, and none of the requirements above require such waiver. Nothing herein alters that policy, which remains in full force and effect. Furthermore, not all companies will satisfy all the components of full cooperation for purposes of USAM 9-47.120(2) and (3)(b), either because they decide to cooperate only later in an investigation or they timely decide to cooperate but fail to meet all of the criteria listed above. In general, such companies will be eligible for some cooperation credit if they meet the criteria of USAM § 9-28.700, but the credit generally will be markedly less than for full cooperation,

depending on the extent to which the cooperation was lacking.

Remediation: In order for a company to receive full credit for remediation and avail itself of the benefits of the FCPA Corporate Enforcement Policy, the company must have effectively remediated at the time of the resolution.

The requirement that a company pay all disgorgement, forfeiture, and/or restitution resulting from the misconduct at issue may be satisfied by a parallel resolution with a relevant regulator (e.g., the United States Securities and Exchange Commission).

Public Release: A declination pursuant to the FCPA Corporate Enforcement Policy is a case that would have been prosecuted or criminally resolved except for the company's voluntary disclosure, full cooperation, remediation, and payment of disgorgement, forfeiture, and/or restitution. If a case would have been declined in the absence of such circumstances, it is not a declination pursuant to this Policy. Declinations awarded under the FCPA Corporate Enforcement Policy will be made public.

[added November 2017]

9-47.130 - Civil Injunctive Actions

The SEC has authority to obtain civil injunctions against future violations of the record keeping and antibribery provisions of the FCPA by issuers. *See* 15 U.S.C. § 78u. Civil injunctions against violations of the antibribery provisions by domestic concerns and foreign nationals and companies shall be instituted by Trial Attorneys of the Fraud Section in cooperation with the appropriate United States Attorney, unless otherwise directed by the AAG, Criminal Division. *See* §§ 78dd-2(d), 78dd-3(d).

[updated November 2000]

‹ 9-46.000 - Program Fraud And Bribery up 9-48.000 - Computer Fraud ›

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE Tuesday, November 26, 2013

Three Subsidiaries of Weatherford International Limited Agree to Plead Guilty to FCPA and Export Control Violations

Weatherford International and Subsidiaries Agree to Pay $252 Million in Penalties and Fines

Three subsidiaries of Weatherford International Limited (Weatherford International), a Swiss oil services company that trades on the New York Stock Exchange, have agreed to plead guilty to anti-bribery provisions of the Foreign Corrupt Practices Act (FCPA) and export controls violations under the International Emergency Economic Powers Act (IEEPA) and the Trading With the Enemy Act (TWEA). Weatherford International and its subsidiaries have also agreed to pay more than $252 million in penalties and fines.

Acting Assistant Attorney General Mythili Raman of the Justice Department's Criminal Division, U.S. Attorney Kenneth Magidson of the Southern District of Texas, and Assistant Director in Charge Valerie Parlave of the FBI's Washington Field Office made the announcement..

Weatherford Services Limited (Weatherford Services), a subsidiary of Weatherford International, today agreed to plead guilty to violating the anti-bribery provisions of the FCPA. As part of a coordinated FCPA resolution, the department today also filed a criminal information in U.S. District Court for the Southern District of Texas charging Weatherford International with one count of violating the internal controls provisions of the FCPA. To resolve the charge, Weatherford International has agreed to pay an $87.2 million criminal penalty as part of a deferred prosecution agreement with the department.

"Effective internal accounting controls are not only good policy, they are required by law for publicly traded companies – and for good reason," said Acting Assistant Attorney General Raman. "This case demonstrates how loose controls and an anemic compliance environment can foster foreign bribery and fraud by a company's subsidiaries around the globe. Although Weatherford's extensive remediation and its efforts to improve its compliance functions are positive signs, the corrupt conduct of Weatherford International's subsidiaries allowed it to earn millions of dollars in illicit profits, for which it is now paying a significant price."

"When business executives engage in bribery and pay-offs in order to obtain contracts, an uneven marketplace is created and honest competitor companies are put at a disadvantage," said Assistant Director in Charge Parlave. "The FBI is committed to investigating corrupt backroom deals that influence contract procurement and threaten our global commerce."

In a separate matter, Weatherford International and four of its subsidiaries today agreed to pay a combined

$100 million to resolve a criminal and administrative export controls investigation conducted by the U.S. Attorney's Office for the Southern District of Texas, the Department of Commerce's Bureau of Industry and Security, and the Department of the Treasury's Office of Foreign Assets Control. As part of the resolution of that investigation, Weatherford International has agreed to enter into a deferred prosecution agreement for a term of two years and two of its subsidiaries have agreed to plead guilty to export controls charges.

"The resolution today of these criminal charges represents the seriousness that our office and the Department of Justice puts on enforcing the export control and sanctions laws," said U.S. Attorney Magidson.

In a related FCPA matter, the U.S. Securities and Exchange Commission (SEC) filed a settlement today in which Weatherford International consented to the entry of a permanent injunction against FCPA violations and agreed to pay $65,612,360 in disgorgement, prejudgment interest, and civil penalties. Weatherford International also agreed with the SEC to comply with certain undertakings regarding its FCPA compliance program, including the retention of an independent corporate compliance monitor.

The combined investigations resulted in the conviction of three Weatherford subsidiaries, the entry by Weatherford International into two deferred prosecution agreements and a civil settlement, and the payment of a total of $252,690,606 in penalties and fines.

FCPA Violations

According to court documents filed by the department, prior to 2008, Weatherford International knowingly failed to establish an effective system of internal accounting controls designed to detect and prevent corruption, including FCPA violations. The company failed to implement these internal controls despite operating in an industry with a substantial corruption risk profile and despite growing its global footprint in large part by purchasing existing companies, often themselves in countries with high corruption risks. As a result, a permissive and uncontrolled environment existed within which employees of certain of Weatherford International's wholly owned subsidiaries in Africa and the Middle East were able to engage in corrupt conduct over the course of many years, including both bribery of foreign officials and fraudulent misuse of the United Nations' Oil for Food Program.

Court documents state that Weatherford Services employees established and operated a joint venture in Africa with two local entities controlled by foreign officials and their relatives from 2004 through at least 2008. The foreign officials selected the entities with which Weatherford Services would partner, and Weatherford Services and Weatherford International employees knew that the members of the local entities included foreign officials' relatives and associates. Notwithstanding the fact that the local entities did not contribute capital, expertise or labor to the joint venture, neither Weatherford Services nor Weatherford International investigated why the local entities were involved in the joint venture. The sole purpose of those local entities, in fact, was to serve as conduits through which Weatherford Services funneled hundreds of thousands of dollars in payments to the foreign officials controlling them. In exchange for the payments they received from Weatherford Services through the joint venture, the foreign officials awarded the joint venture lucrative contracts, gave Weatherford Services inside information about competitors' pricing, and took contracts away from Weatherford Services' competitors and awarded them to the joint venture.

Additionally, Weatherford Services employees in Africa bribed a foreign official so that he would approve the renewal of an oil services contract, according to court documents. Weatherford Services funneled bribery payments to the foreign official through a freight forwarding agent it retained via a consultancy agreement in July 2006. Weatherford Services generated sham purchase orders for consulting services the freight forwarding agent never performed, and the freight forwarding agent, in turn, generated sham

invoices for those same nonexistent services. When paid for those invoices, the freight forwarding agent passed at least some of those monies on to the foreign official with the authority to approve Weatherford Services' contract renewal. In exchange for these payments, the foreign official awarded the renewal contract to Weatherford Services in 2006.

Further, according to court documents, in a third scheme in the Middle East, from 2005 through 2011, employees of Weatherford Oil Tools Middle East Limited (WOTME), another Weatherford International subsidiary, awarded improper "volume discounts" to a distributor who supplied Weatherford International products to a government-owned national oil company, believing that those discounts were being used to create a slush fund with which to make bribe payments to decision-makers at the national oil company. Between 2005 and 2011, WOTME paid approximately $15 million in volume discounts to the distributor.

Weatherford International's failure to implement effective internal accounting controls also permitted corrupt conduct relating to the United Nations' Oil for Food Program to occur, according to court documents. Between in or about February 2002 and in or about July 2002, WOTME paid approximately $1,470,128 in kickbacks to the government of Iraq on nine contracts with Iraq's Ministry of Oil, as well as other ministries, to provide oil drilling and refining equipment. WOTME falsely recorded these kickbacks as other, seemingly legitimate, types of costs and fees. Further, WOTME concealed the kickbacks from the U.N. by inflating contract prices by 10 percent.

According to court documents, these corrupt transactions in Africa and the Middle East earned Weatherford International profits of $54,486,410, which were included in the consolidated financial statements that Weatherford International filed with the SEC .

In addition to the guilty plea by Weatherford Services, the deferred prosecution agreement entered into by Weatherford International and the Department requires the company to cooperate with law enforcement, retain an independent corporate compliance monitor for at least 18 months, and continue to implement an enhanced compliance program and internal controls designed to prevent and detect future FCPA violations. The agreement acknowledges Weatherford International's cooperation in this matter, including conducting a thorough internal investigation into bribery and related misconduct, and its extensive remediation and compliance improvement efforts.

Export Control Violations

According to court documents filed today in a separate matter, between 1998 and 2007, Weatherford International and some its subsidiaries engaged in conduct that violated various U.S. export control and sanctions laws by exporting or re-exporting oil and gas drilling equipment to, and conducting Weatherford business operations in, sanctioned countries without the required U.S. Government authorization. In addition to the involvement of employees of several Weatherford International subsidiaries, some Weatherford International executives, managers, or employees on multiple occasions participated in, directed, approved, and facilitated the transactions and the conduct of its various subsidiaries.

This conduct involved persons within the U.S.-based management structure of Weatherford International participating in conduct by Weatherford International foreign subsidiaries, and the unlicensed export or re-export of U.S.-origin goods to Cuba, Iran, Sudan, and Syria. Weatherford subsidiaries Precision Energy Services Colombia Ltd. (PESC) and Precision Energy Services Ltd. (PESL), both headquartered in Canada, conducted business in the country of Cuba. Weatherford's subsidiary Weatherford Oil Tools Middle East (WOTME), headquartered in the United Arab Emirates (UAE), conducted business in the countries of Iran, Sudan, and Syria. Weatherford's subsidiary Weatherford Production Optimisation f/k/a eProduction Solutions U.K. Ltd. (eProd-U.K.), headquartered in the United Kingdom, conducted business in the country

of Iran. Weatherford generated approximately $110 million in revenue from its illegal transactions in Cuba, Iran, Syria and Sudan.

To resolve these charges, Weatherford and its subsidiaries will pay a total penalty of $100 million, with a $48 million monetary penalty paid pursuant to a deferred prosecution agreement, $2 million paid in criminal fines pursuant to the two guilty pleas, and a $50 million civil penalty paid pursuant to a Department of Commerce settlement agreement to resolve 174 violations charged by Commerce's Bureau of Industry and Security. Weatherford International and certain of its affiliates are also signing a $91 million settlement agreement with the Department of the Treasury to resolve their civil liability arising out of the same underlying course of conduct, which will be deemed satisfied by the payments above.

The FCPA case was investigated by the FBI's Washington Field Office and its team of special agents dedicated to the investigation of foreign bribery cases. The case is being prosecuted by Trial Attorney Jason Linder of the Criminal Division's Fraud Section, with the assistance of Assistant U.S. Attorney Mark McIntyre of the Southern District of Texas. The case was previously investigated by Fraud Section Trial Attorneys Kathleen Hamann and Allan Medina, with assistance from the Criminal Division's Asset Forfeiture and Money Laundering Section. The Justice Department also acknowledges and expresses its appreciation for the significant assistance provided by the SEC's FCPA Unit.

The export case was investigated by the Department of Commerce's Bureau of Industry and Security, Office of Export Enforcement, and the Department of the Treasury's Office of Foreign Assets Control. The case is being prosecuted by Assistant U.S. Attorney S. Mark McIntyre and was previously investigated by Assistant U.S. Attorney Jeff Vaden.

Additional information about the Justice Department's FCPA enforcement efforts can be found at www.justice.gov/criminal/fraud/fcpa .

Component(s):
Criminal Division

Press Release Number:
13-1260

Updated September 15, 2014

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE Monday, March 1, 2010

BAE Systems PLC Pleads Guilty and Ordered to Pay $400 Million Criminal Fine

BAE Systems plc (BAES) pleaded guilty today in U.S. District Court in the District of Columbia to conspiring to defraud the United States by impairing and impeding its lawful functions, to make false statements about its Foreign Corrupt Practices Act (FCPA) compliance program, and to violate the Arms Export Control Act (AECA) and International Traffic in Arms Regulations (ITAR), announced Acting Deputy Attorney General Gary G. Grindler. BAES was sentenced today by U.S. District Court Judge John D. Bates to pay a $400 million criminal fine, one of the largest criminal fines in the history of DOJ's ongoing effort to combat overseas corruption in international business and enforce U.S. export control laws.

"Today, BAE Systems pleaded guilty to knowingly and willfully making false statements to U.S. government agencies. The actions of BAE Systems impeded U.S. efforts to ensure international trade is free of corruption and to maintain control over sensitive U.S. technology," said Acting Deputy Attorney General Gary G. Grindler. "BAE Systems will pay a $400 million fine for its criminal conduct – one of the largest criminal fines ever levied in the United States against a company for business related violations. The remediation measures BAE Systems has undertaken, in conjunction with its agreement to retain an independent compliance monitor, are evidence supporting BAE Systems' stated commitment to ensure that it operates in a transparent, honest and responsible manner going forward. The Department of Justice will continue to hold accountable companies that impair the operations of the U.S. government by lying about their conduct and operations."

"Competition is one of the foundations of our economic system," said Shawn Henry, Assistant Director in Charge of the FBI's Washington Field Office. "Corporations and individuals who conspire to defeat this basic economic principle not only cause harm but ultimately shake the public's confidence in the entire system."

"Providing false statements to circumvent U.S. export laws and to defraud the U.S. Government must be vigorously prosecuted," said John Morton, assistant secretary of Homeland Security for U.S. Immigration and Customs Enforcement (ICE). "ICE is committed to working with our federal and international partners to investigate violations of U.S. export controls to assure sensitive technologies are not fraudulently and unlawfully acquired."

BAES is a multinational defense contractor with headquarters in the United Kingdom and with a U.S. subsidiary - BAE Systems Inc. - headquartered in Rockville, Md. None of the criminal conduct described in the plea involved the actions of BAE Systems Inc.

According to court documents, from approximately 2000 to 2002, BAES represented to various U.S. government agencies, including the Departments of Defense and Justice, that it would create and implement policies and procedures to ensure its compliance with the anti-bribery provisions of the FCPA, as well as similar, foreign laws implementing the Organization for Economic Cooperation and Development (OECD) Anti-bribery Convention. According to court documents, BAES knowingly and willfully failed to create mechanisms to ensure compliance with these legal prohibitions on foreign bribery. According to court documents, the gain to BAES from the various false statements and failures to make required disclosures to the U.S. government was more than $200 million.

The FCPA makes it illegal for certain businesses and individuals, or anyone taking action within U.S. territorial jurisdiction, corruptly to make payments to foreign government officials for the purpose of obtaining or retaining business. In addition, the FCPA prohibits corruptly making payments to a third party, while knowing that all or a portion of the payments will go directly or indirectly to a foreign government official for the purpose of obtaining or retaining business. Despite BAES's representations to the U.S. government to the contrary, BAES knowingly and willfully failed to create sufficient compliance mechanisms to prevent and detect violations of the anti-bribery provisions of the FCPA.

According to court documents, BAES made a series of substantial payments to shell companies and third party intermediaries that were not subjected to the degree of scrutiny and review to which BAES told the U.S. government the payments would be subjected. BAES admitted it regularly retained what it referred to as "marketing advisors" to assist in securing sales of defense items without scrutinizing those relationships. In fact, BAES took steps to conceal from the U.S. government and others its relationships with some of these advisors and its undisclosed payments to them. For example, after May 2001, BAES contracted with and paid certain advisors through various offshore shell companies beneficially owned by BAES. BAES also encouraged certain advisors to establish their own offshore shell companies to receive payments from BAES while disguising the origins and recipients of these payments. BAES admitted that it established one company in the British Virgin Islands (BVI) to conceal its marketing advisor relationships, including who the advisor was and how much it was paid; to create obstacles for investigating authorities to penetrate the arrangements; to circumvent laws in countries that did not allow such relationships; and to assist advisors in avoiding tax liability for payments from BAES.

Through this BVI entity, from May 2001 onward, BAES made payments totaling more than £135 million plus more than $14 million, even though in certain situations BAES was aware there was a high probability that part of the payments would be used to ensure that BAES was favored in foreign government decisions regarding the purchase of defense articles. According to court documents, in many instances, BAES possessed no adequate evidence that its advisors performed any legitimate activities in justification of the substantial payments.

In addition, according to court documents, BAES began serving as the prime contractor to the U.K. government in the mid-1980s, after the U.K. and the Kingdom of Saudi Arabia (KSA) entered into a formal understanding. According to court documents, the "support services" that BAES provided according to the formal understanding resulted, in part, in BAES providing substantial benefits to a foreign public official of KSA, who was in a position of influence regarding sales of fighter jets, other defense materials and related support services. BAES admitted it undertook no adequate review or verification of benefits provided to the KSA official, including no adequate review or verification of more than $5 million in invoices submitted by a BAES employee from May 2001 to early 2002 to determine whether the listed expenses were in compliance with previous statements made by BAES to the U.S. government regarding its anti-corruption compliance procedures. In addition, in connection with these same defense deals, BAES agreed to transfer more than £10 million plus more than $9 million to a bank account in Switzerland controlled by an intermediary, being aware that there was a high probability that the intermediary would transfer part of these payments to the same KSA official.

Also as part of its guilty plea, BAES admitted to making and causing to be made certain false, inaccurate and incomplete statements, and failing to make required disclosures to the U.S. government in connection with the administration of certain regulatory functions, including statements and disclosures related to applications for arms export licenses, as required by the AECA and ITAR. The AECA and ITAR prohibit the export of defense-related materials to a foreign national or a foreign nation without the required U.S. government license, and the Department of State has the power to approve or deny such applications. As part of the licensing scheme, applicants are required to identify associated commissions to the State Department- whether they are legitimate commissions or bribes - paid to anyone who helps secure the sales of defense materials.

BAES admitted that, as part of the conspiracy, it knowingly and willfully failed to identify commissions paid to third parties for assistance in soliciting, promoting or otherwise securing sales of defense items in violation of the AECA and ITAR. BAES failed to identify the commission payments paid through the BVI entity described above, in order to keep the fact and scope of its external advisors from public scrutiny. In one specific instance, BAES caused the filing of false applications for export licenses for Gripen fighter jets to the Czech Republic and Hungary by failing to tell the export license applicant or the State Department of £19 million BAES paid to an intermediary with the high probability that it would be used to influence that tender process to favor BAES.

As part of its guilty plea, BAES has agreed to maintain a compliance program that is designed to detect and deter violations of the FCPA, other foreign bribery laws implementing the OECD Anti-bribery Convention, and any other applicable anti-corruption laws, and that is designed to detect and deter violations of the AECA and ITAR, as well as similar export control laws. Under the terms of the plea agreement, BAES has agreed to retain an independent compliance monitor for three years to assess BAES's compliance program and to make a series of reports to the company and the Justice Department.

The criminal case is being prosecuted by Senior Litigation Counsel Nathaniel B. Edmonds and Deputy Chief Mark F. Mendelsohn of the Criminal Division's Fraud Section and Trial Attorney Patrick T. Murphy of the National Security Division's Counterespionage Section. The Fraud Section is responsible for all investigations and prosecutions of the Foreign Corrupt Practices Act, and conducts other investigations into sophisticated economic crimes. The Counterespionage Section supervises the investigation and prosecution of cases involving the export of military and strategic commodities and technology, including cases under the AECA and ITAR.

The criminal case was investigated by FBI special agents who are part of the Washington Field Office's dedicated FCPA squad and special agents of the U.S. Immigration and Customs Enforcement's Counter Proliferation Unit. Investigative assistance also was provided by the Defense Criminal Investigative Services and the General Services Administration, Office of Inspector General. The Criminal Division's Office of International Affairs provided substantial assistance in support of the investigation.

The Department of Justice acknowledges and expresses its appreciation of the significant assistance provided by the U.K.'s Serious Fraud Office, and further expresses its gratitude to that office for its ongoing partnership in the fight against overseas corruption.

Criminal Information

Sentencing Memo

Plea Agreement

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Criminal Division

Press Release Number:
10-209

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JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE Thursday, March 18, 2010

Innospec Inc. Pleads Guilty to FCPA Charges and Defrauding the United Nations; Admits to Violating the U.S. Embargo Against Cuba

Coordinated Global Enforcement Action by DOJ, SEC, OFAC and United Kingdom's Serious Fraud Office

Innospec Inc., a Delaware corporation, pleaded guilty today to defrauding the United Nations (UN), to violating the Foreign Corrupt Practices Act (FCPA) and to violating the U.S. embargo against Cuba, announced Assistant Attorney General Lanny A. Breuer of the Criminal Division; Director Adam Szubin of the Department of the Treasury's Office of Foreign Assets Control (OFAC); Assistant Director in Charge Shawn Henry of the FBI's Washington Field Office; and Robert Khuzami, Director of the U.S. Securities and Exchange Commission's (SEC) Division of Enforcement

Innospec pleaded guilty before U.S. District Judge Ellen Segal Huvelle in the District of Columbia to a 12-count information charging wire fraud in connection with Innospec's payment of kickbacks to the former Iraqi government under the UN Oil for Food Program (OFFP), as well as FCPA violations in connection with bribe payments it made to officials in the Iraqi Ministry of Oil. Innospec also admitted to selling chemicals to Cuban power plants, in violation of the U.S. embargo against Cuba. According to court documents, Innospec manufactures and sells specialty chemicals and is the world's only manufacturer of the anti-knock compound tetraethyl lead, used in leaded gasoline.

As part of the plea agreement with the Department of Justice, Innospec agreed to pay a $14.1 million criminal fine and to retain an independent compliance monitor for a minimum of three years to oversee the implementation of a robust anti-corruption and export control compliance program and report periodically to the Department of Justice. Innospec also agreed to fully cooperate with the Department of Justice and other U.S. and foreign authorities in ongoing investigations of corrupt payments by Innospec employees and agents.

"Today's case is a win for law-abiding companies trying to compete fairly in the marketplace. Fraud and corruption cannot be viewed simply as a cost of doing business," said Assistant Attorney General Lanny A. Breuer of the Criminal Division. "By continuing to work with our U.S. and foreign law enforcement partners to hold companies accountable for their criminal conduct, we level the playing field for everyone."

"Today's settlement agreements are a product of close cooperation both within the U.S. government and with our counterparts in the United Kingdom, and demonstrate the importance of complying with national security and foreign policy sanctions," said OFAC Director Adam J. Szubin.

"Today's action makes clear that law enforcement authorities within the United States and across the globe are working together to aggressively monitor violators of anti-corruption laws," said Robert Khuzami, Director of SEC's Division of Enforcement.

"I'm proud of the amazing work done by FBI agents and analysts who, together with other agencies, fight this quiet corruption that attacks the underlying basis of the U.S. economy; that is fair business practices," said Assistant Director in Charge Shawn Henry of the FBI's Washington Field Office.

According to court documents, from 2000 to 2003, Innospec's Swiss subsidiary, Alcor, was awarded five contracts valued at more than €40 million to sell tetraethyl lead to refineries run by the Iraqi Ministry of Oil under the OFFP. To obtain these contracts, Innospec admitted that Alcor paid or promised to pay at least $4 million in kickbacks to the former Iraqi government. Court documents detail how Alcor inflated the price of the contracts by approximately 10 percent to cover the cost of the kickbacks before submitting them to the UN for approval, and then falsely characterized the payments on the company's books and records as "commissions" paid to Ousama Naaman, its agent in Iraq.

According to court documents, Innospec also admitted to paying and promising to pay more than $1.5 million in bribes, in the form of cash and travel, to officials of the Iraqi Ministry of Oil to secure sales of tetraethyl lead in Iraq from 2004 to 2008, as well as to paying $150,000 in 2006 to officials in the Iraqi Ministry of Oil to ensure that a competing product to tetraethyl lead was not approved for use in Iraqi refineries. Innospec admitted that the illicit payments were recorded as "commissions" on the basis of false invoices, which were incorporated into the company's books and records.

Naaman, Innospec's agent in Iraq, was indicted in the District of Columbia on Aug. 8, 2008, and later arrested in Frankfurt, Germany, on July 30, 2009, based on a U.S. arrest warrant. The United States is currently seeking Naaman's extradition from Germany. The charges contained in the indictment are merely accusations and the defendant is presumed innocent until proven guilty beyond a reasonable doubt.

According to the plea agreement, Innospec also admitted that a subsidiary sold nearly $20 million in oil soluble fuel additives from 2001 to 2004 to state-owned Cuban power plants without a license from OFAC, in violation of the Trading With the Enemy Act. In addition, Innospec acknowledged in court documents that it paid approximately $2.9 million in bribes to officials of the Indonesian government to secure sales.

In a related matter, Innospec today settled a civil complaint filed by the SEC, charging Innospec with violating the FCPA's anti-bribery, internal controls, and books and records provisions in connection with the misconduct described in court documents. Innospec will disgorge $11.2 million in profits to the SEC. Also today, Innospec agreed to pay $2.2 million to resolve outstanding matters with the OFAC related to the U.S. embargo against Cuba.

In another related matter brought by the United Kingdom's Serious Fraud Office (SFO), Innospec's British subsidiary, Innospec Ltd., pleaded guilty today in the Southwark Crown Court in London in connection with the corrupt payments to Indonesian officials. In connection with those charges, Innospec Ltd will pay a criminal penalty of $12.7 million. The judge in this case has reserved his sentencing remarks to a date to be scheduled next week. The SFO's case was developed as a result of a referral from the Department of Justice in October 2007.

This case is being prosecuted by Trial Attorney Kathleen M Hamann of the Criminal Division's Fraud Section. The case is being investigated by the FBI Washington Field Office's dedicated FCPA squad.

The Department of Justice, the SEC, the OFAC and the SFO worked together to reach this $40.2 million global settlement. The department acknowledges and expresses its appreciation for the significant assistance provided by the staff of the SEC's Division of Enforcement, as well as the Enforcement Division

at OFAC and the U.S. Department of Commerce, during the course of this investigation. The Department of Justice also acknowledges the extensive coordination and cooperation with the SFO.

Information

Component(s):
Criminal Division

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JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE Tuesday, December 11, 2012

HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit $1.256 Billion in Deferred Prosecution Agreement

Bank Agrees to Enhanced Compliance Obligations, Oversight by Monitorin Connection with Five-year Agreement

WASHINGTON – HSBC Holdings plc (HSBC Group) – a United Kingdom corporation headquartered in London – and HSBC Bank USA N.A. (HSBC Bank USA) (together, HSBC) – a federally chartered banking corporation headquartered in McLean, Va. – have agreed to forfeit $1.256 billion and enter into a deferred prosecution agreement with the Justice Department for HSBC's violations of the Bank Secrecy Act (BSA), the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA). According to court documents, HSBC Bank USA violated the BSA by failing to maintain an effective anti-money laundering program and to conduct appropriate due diligence on its foreign correspondent account holders. The HSBC Group violated IEEPA and TWEA by illegally conducting transactions on behalf of customers in Cuba, Iran, Libya, Sudan and Burma – all countries that were subject to sanctions enforced by the Office of Foreign Assets Control (OFAC) at the time of the transactions.

The announcement was made by Lanny A. Breuer, Assistant Attorney General of the Justice Department's Criminal Division; Loretta Lynch, U.S. Attorney for the Eastern District of New York; and John Morton, Director of U.S. Immigration and Customs Enforcement (ICE); along with numerous law enforcement and regulatory partners. The New York County District Attorney's Office worked with the Justice Department on the sanctions portion of the investigation. Treasury Under Secretary David S. Cohen and Comptroller of the Currency Thomas J. Curry also joined in today's announcement.

A four-count felony criminal information was filed today in federal court in the Eastern District of New York charging HSBC with willfully failing to maintain an effective anti-money laundering (AML) program, willfully failing to conduct due diligence on its foreign correspondent affiliates, violating IEEPA and violating TWEA. HSBC has waived federal indictment, agreed to the filing of the information, and has accepted responsibility for its criminal conduct and that of its employees.

"HSBC is being held accountable for stunning failures of oversight – and worse – that led the bank to permit narcotics traffickers and others to launder hundreds of millions of dollars through HSBC subsidiaries, and to facilitate hundreds of millions more in transactions with sanctioned countries," said Assistant Attorney General Breuer. "The record of dysfunction that prevailed at HSBC for many years was astonishing. Today, HSBC is paying a heavy price for its conduct, and, under the terms of today's agreement, if the bank fails to comply with the agreement in any way, we reserve the right to fully prosecute it."

"Today we announce the filing of criminal charges against HSBC, one of the largest financial institutions in the world," said U.S. Attorney Lynch. "HSBC's blatant failure to implement proper anti-money laundering controls facilitated the laundering of at least $881 million in drug proceeds through the U.S. financial system. HSBC's willful flouting of U.S. sanctions laws and regulations resulted in the processing of hundreds of millions of dollars in OFAC-prohibited transactions. Today's historic agreement, which imposes the largest penalty in any BSA prosecution to date, makes it clear that all corporate citizens, no matter how large, must be held accountable for their actions."

"Cartels and criminal organization are fueled by money and profits," said ICE Director Morton. "Without their illicit proceeds used to fund criminal activities, the lifeblood of their operations is disrupted. Thanks to the work of Homeland Security Investigations and our El Dorado Task Force, this financial institution is being held accountable for turning a blind eye to money laundering that was occurring right before their very eyes. HSI will continue to aggressively target financial institutions whose inactions are contributing in no small way to the devastation wrought by the international drug trade. There will be also a high price to pay for enabling dangerous criminal enterprises."

In addition to forfeiting $1.256 billion as part of its deferred prosecution agreement (DPA) with the Department of Justice, HSBC has also agreed to pay $665 million in civil penalties – $500 million to the Office of the Comptroller of the Currency (OCC) and $165 million to the Federal Reserve – for its AML program violations. The OCC penalty also satisfies a $500 million civil penalty of the Financial Crimes Enforcement Network (FinCEN). The bank's $375 million settlement agreement with OFAC is satisfied by the forfeiture to the Department of Justice. The United Kingdom's Financial Services Authority (FSA) is pursuing a separate action.

As required by the DPA, HSBC also has committed to undertake enhanced AML and other compliance obligations and structural changes within its entire global operations to prevent a repeat of the conduct that led to this prosecution. HSBC has replaced almost all of its senior management, "clawed back" deferred compensation bonuses given to its most senior AML and compliance officers, and has agreed to partially defer bonus compensation for its most senior executives – its group general managers and group managing directors – during the period of the five-year DPA. In addition to these measures, HSBC has made significant changes in its management structure and AML compliance functions that increase the accountability of its most senior executives for AML compliance failures.

The AML Investigation

According to court documents, from 2006 to 2010, HSBC Bank USA severely understaffed its AML compliance function and failed to implement an anti-money laundering program capable of adequately monitoring suspicious transactions and activities from HSBC Group Affilliates, particularly HSBC Mexico, one of HSBC Bank USA's largest Mexican customers. This included a failure to monitor billions of dollars in purchases of physical U.S. dollars, or "banknotes," from these affiliates. Despite evidence of serious money laundering risks associated with doing business in Mexico, from at least 2006 to 2009, HSBC Bank USA rated Mexico as "standard" risk, its lowest AML risk category. As a result, HSBC Bank USA failed to monitor over $670 billion in wire transfers and over $9.4 billion in purchases of physical U.S. dollars from HSBC Mexico during this period, when HSBC Mexico's own lax AML controls caused it to be the preferred financial institution for drug cartels and money launderers.

A significant portion of the laundered drug trafficking proceeds were involved in the Black Market Peso Exchange (BMPE), a complex money laundering system that is designed to move the proceeds from the sale of illegal drugs in the United States to drug cartels outside of the United States, often in Colombia. According to court documents, beginning in 2008, an investigation conducted by ICE Homeland Security Investigation's (HSI's) El Dorado Task Force, in conjunction with the U.S. Attorney's Office for the Eastern

District of New York, identified multiple HSBC Mexico accounts associated with BMPE activity and revealed that drug traffickers were depositing hundreds of thousands of dollars in bulk U.S. currency each day into HSBC Mexico accounts. Since 2009, the investigation has resulted in the arrest, extradition, and conviction of numerous individuals illegally using HSBC Mexico accounts in furtherance of BMPE activity.

As a result of HSBC Bank USA's AML failures, at least $881 million in drug trafficking proceeds – including proceeds of drug trafficking by the Sinaloa Cartel in Mexico and the Norte del Valle Cartel in Colombia – were laundered through HSBC Bank USA. HSBC Group admitted it did not inform HSBC Bank USA of significant AML deficiencies at HSBC Mexico, despite knowing of these problems and their effect on the potential flow of illicit funds through HSBC Bank USA.

The Sanctions Investigation

According to court documents, from the mid-1990s through September 2006, HSBC Group allowed approximately $660 million in OFAC-prohibited transactions to be processed through U.S. financial institutions, including HSBC Bank USA. HSBC Group followed instructions from sanctioned entities such as Iran, Cuba, Sudan, Libya and Burma, to omit their names from U.S. dollar payment messages sent to HSBC Bank USA and other financial institutions located in the United States. The bank also removed information identifying the countries from U.S. dollar payment messages; deliberately used less-transparent payment messages, known as cover payments; and worked with at least one sanctioned entity to format payment messages, which prevented the bank's filters from blocking prohibited payments.

Specifically, beginning in the 1990s, HSBC Group affiliates worked with sanctioned entities to insert cautionary notes in payment messages including "care sanctioned country," "do not mention our name in NY," or "do not mention Iran." HSBC Group became aware of this improper practice in 2000. In 2003, HSBC Group's head of compliance acknowledged that amending payment messages "could provide the basis for an action against [HSBC] Group for breach of sanctions." Notwithstanding instructions from HSBC Group Compliance to terminate this practice, HSBC Group affiliates were permitted to engage in the practice for an additional three years through the granting of dispensations to HSBC Group policy.

Court documents show that as early as July 2001, HSBC Bank USA's chief compliance officer confronted HSBC Group's Head of Compliance on the issue of amending payments and was assured that "Group Compliance would not support blatant attempts to avoid sanctions, or actions which would place [HSBC Bank USA] in a potentially compromising position." As early as July 2001, HSBC Bank USA told HSBC Group's head of compliance that it was concerned that the use of cover payments prevented HSBC Bank USA from confirming whether the underlying transactions met OFAC requirements. From 2001 through 2006, HSBC Bank USA repeatedly told senior compliance officers at HSBC Group that it would not be able to properly screen sanctioned entity payments if payments were being sent using the cover method. These protests were ignored.

"Today HSBC is being held accountable for illegal transactions made through the U.S. financial system on behalf of entities subject to U.S. economic sanctions," said Debra Smith, Acting Assistant Director in Charge of the FBI's Washington Field Office. "The FBI works closely with partner law enforcement agencies and federal regulators to ensure compliance with federal banking laws to promote integrity across financial institutions worldwide."

"Banks are the first layer of defense against money launderers and other criminal enterprises who choose to utilize our nation's financial institutions to further their criminal activity," said Richard Weber, Chief, Internal Revenue Service-Criminal Investigation (IRS-CI). "When a bank disregards the Bank Secrecy Act's reporting requirements, it compromises that layer of defense, making it more difficult to identify, detect and deter criminal activity. In this case, HSBC became a conduit to money laundering. The IRS is proud to

partner with the other law enforcement agencies and share its world-renowned financial investigative expertise in this and other complex financial investigations."

Manhattan District Attorney Cyrus R. Vance Jr., said, "New York is a center of international finance, and those who use our banks as a vehicle for international crime will not be tolerated. My office has entered into Deferred Prosecution Agreements with two different banks in just the past two days, and with six banks over the past four years. Sanctions enforcement is of vital importance to our national security and the integrity of our financial system. The fight against money laundering and terror financing requires global cooperation, and our joint investigations in this and other related cases highlight the importance of coordination in the enforcement of U.S. sanctions. I thank our federal counterparts for their ongoing partnership."

Queens County District Attorney Richard A. Brown said, "No corporate entity should ever think itself too large to escape the consequences of assisting international drug cartels. In particular, banks have a special responsibility to use appropriate due diligence in monitoring the cash transactions flowing through their financial system and identifying the sources of that money in order not to assist in criminal activity. By allowing such illicit transactions to occur, HSBC failed in its global responsibility to us all. Hopefully, as a result of this historical settlement, we have gained the attention of not only HSBC but that of every other major financial institution so that they cannot turn a blind eye to the crime of money laundering."

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This case was prosecuted by Money Laundering and Bank Integrity Unit Trial Attorneys Joseph Markel and Craig Timm of the Criminal Division's Asset Forfeiture and Money Laundering Section, and Assistant U.S. Attorneys Alex Solomon and Daniel Silver of the U.S. Attorney's Office for the Eastern District of New York.

The AML investigation was conducted by HSI's El Dorado Task Force, a joint task force composed of members from more than 55 law enforcement agencies in New York and New Jersey, including special agents and investigators from IRS-CI and the Queens County District Attorney's Office, other federal agents, state and local police investigators and intelligence analysts, with the assistance of DEA's New York Division. The sanctions investigation was conducted by the FBI's Washington Field Office.

The Money Laundering and Bank Integrity Unit is a corps of prosecutors with a boutique practice aimed at hardening the financial system against criminal money laundering vulnerabilities by investigating and prosecuting financial institutions and professional money launderers for violations of the anti-money laundering statutes, the Bank Secrecy Act and other related statutes.

The Department of Justice expressed gratitude to William Ihlenfeld II, U.S. Attorney for the Northern District of West Virginia; Assistant District Attorney Garrett Lynch of the New York County District Attorney's Office, Major Economic Crimes Bureau; the Treasury Department's Office of Foreign Assets Control; the Board of Governors of the Federal Reserve System; and the Office of the Comptroller of the Currency for their significant and valuable assistance.

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Criminal Division

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JUSTICE NEWS

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FOR IMMEDIATE RELEASE Wednesday, January 3, 2018

Turkish Banker Convicted of Conspiring to Evade U.S. Sanctions Against Iran and Other Offenses

Mehmet Hakan Atilla was found guilty today of conspiring with others, including Reza Zarrab, aka Riza Sarraf, who previously pleaded guilty to evading U.S. sanctions among other offenses, to use the U.S. financial system to conduct transactions on behalf of the Government of Iran and other Iranian entities, which were barred by U.S. sanctions, and to defraud U.S. financial institutions by concealing these transactions' true nature.

Acting Assistant Attorney General for National Security Dana J. Boente and Acting U.S. Attorney Joon H. Kim for the Southern District of New York made the announcement. The jury convicted Atilla of five charges in the controlling indictment following a four-week trial before U.S. District Judge Richard M. Berman.

"For years, Mehmet Hakan Atilla conspired to use the American financial system to conduct millions of dollars' worth of illegal transactions on behalf of the Government of Iran," said Acting Assistant Attorney General Boente. "He used his high rank at a Turkish bank to disguise the transactions as humanitarian food payments and deceive American officials, but now, after receiving due process of law, he has been held accountable in court, by an impartial jury. This successful prosecution is another example of our resolve to pursue and bring to justice those who violate our sanctions and other laws that protect our national security."

"Today, after a full, fair, and open trial, a unanimous jury convicted Hakan Atilla, a senior banker at Halk Bank," said Acting U.S. Attorney Kim. "Along with the prior guilty plea of Reza Zarrab, two men at the heart of this massive and brazen scheme that blew a billion-dollar hole in the Iran sanctions regime now stand convicted of serious federal crimes. Foreign banks and bankers have a choice: You can choose willfully to help Iran and other sanctioned nations evade U.S. law, or you can choose to be part of the international banking community transacting in U.S. dollars. But you can't do both. If you lie repeatedly to U.S. Treasury officials and fabricate documents – all as part of a secret scheme to smuggle billions of dollars in Iranian oil money past the U.S. sanctions net – as Atilla did, then you should be prepared for the consequences. The consequence of Atilla's choice is now a felony conviction in an American court of law."

According to the evidence introduced at trial, other proceedings in this case, and documents previously filed in Manhattan federal court:

Beginning in or about 1979, the President, pursuant to the International Emergency Economic Powers Act (IEEPA), has repeatedly found that the actions and policies of the government of Iran constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States and

declared a national emergency to deal with the threat. In accordance with these presidential declarations, the United States has instituted a host of economic sanctions against Iran and Iranian entities. This sanctions regime prohibits, among other things, financial transactions involving the United States or United States persons that were intended for the Government of Iran or Iranian entities.

Atilla, Zarrab and others used deceptive measures to provide access to international financial networks, including U.S. financial institutions, to the Government of Iran, Iranian entities and entities identified by the Department of the Treasury Office of Foreign Assets Control as Specially Designated Nationals (SDNs). They did so by, among other things, using the Turkish bank at which Atilla acted as Deputy General Manager of International Banking (Turkish Bank-1) to engage in transactions that violated U.S. sanctions against Iran. In particular, they took steps to protect and hide Zarrab's supply of currency and gold to the Government of Iran, Iranian entities, and SDNs using Turkish Bank-1, and in doing so, shielded Turkish Bank-1 from U.S. sanctions. Atilla, Zarrab, and others conspired to create and use false and fraudulent documents to disguise prohibited transactions for Iran and make those transactions falsely appear as transactions involving food, thus falling within humanitarian exceptions to the sanctions regime. As a result of this scheme, the co-conspirators induced U.S. banks to unknowingly process international financial transactions in violation of the IEEPA.

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Mehmet Hakan Atilla, 47, is a resident and citizen of Turkey. Atilla was convicted of conspiracies to defraud the United States, to violate the IEEPA, to commit bank fraud and to commit money laundering, as well as a substantive count of bank fraud. The conspiracy to defraud the United States count carries a maximum term of imprisonment of five years. The conspiracy to violate the IEEPA and money laundering conspiracy counts each carry a maximum term of imprisonment of 20 years. The bank fraud counts each carry a maximum term of imprisonment of 30 years. The maximum potential sentences are prescribed by Congress and are provided here for informational purposes only, as any sentencing of the defendant will be determined by the judge. Atilla is scheduled to be sentenced on April 11, before Judge Berman.

Zarrab, 34, also a resident and citizen of Turkey, pleaded guilty Oct. 26, 2017, to one count of conspiring to defraud the United States, which carries a maximum sentence of five years in prison; one count of conspiracy to violate the IEEPA, which carries a maximum sentence of 20 years in prison; one count of bank fraud, which carries a maximum sentence of 30 years in prison; one count of conspiring to commit bank fraud, which carries a maximum sentence of 30 years in prison; one count of money laundering, which carries a maximum sentence of 20 years in prison; one count of conspiring to commit money laundering, which carries a maximum sentence of 20 years in prison; and one count of conspiring to bribe a U.S. public official and possessing contraband in a federal detention center, which carries a maximum sentence of five years in prison. Zarrab's sentencing date has not been scheduled.

Mr. Boente and Mr. Kim praised the outstanding investigative work of the FBI and its New York Field Office, Counterintelligence Division.

Assistant U.S. Attorneys Michael D. Lockard, Sidhardha Kamaraju and David W. Denton, Jr., and Special Assistant U.S. Attorney Dean Sovolos of the Southern District of New York are in charge of the prosecution, with assistance from Deputy Chief Elizabeth Cannon and Trial Attorney David Recker of the National Security Division's Counterintelligence and Export Control Section.

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Counterintelligence and Export Control

Component(s):
National Security Division (NSD)
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